**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**WRIT PETITION No. 374 (M/S) OF 2006**

Raham Ilahi S/o Sri Rahim Bakash
R/o Bodahedi Mohiddinpur,
Pargana – Roorkee, Teh. & District Hardwar
Through Mukhtaire – Khas Noor Hassan
S/o Raham Ilahi, R/o Bodahedi Mohiddinpur,
Pargana – Roorkee, The. & District – Hardwar. ……Petitioner

Versus

1. Mustaq S/o Barkat
2. Hamid S/o Barkat
3. Jakir S/o Mazid
   All R/o Vill. Bodahedi Mohiddinpur,
   Pargana-Roorkee, Tehsil & District Hardwar ...Respondents

***13.04.2006***

***Sri Mahavir Tyagi, learned counsel for the petitioner.***
***Learned Standing Counsel for the respondents.***

**Hon'ble Rajesh Tandon, J.**

Heard Sri Mahavir Tyagi, Learned Counsel for the petitioner, and Learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for setting aside/quashing the order dated 31.03.2006 passed by IInd Additional Civil Judge (J.D.), Hardwar in Civil Suit No.171/2001 Raham Ilahi Vs. Mustaq & others.

Briefly stated according to the case of the petitioner, he has instituted a Civil Suit for permanent injunction being suit no.171 of 2001. During the pendency of the suit, he filed an application praying for the amendment in the schedule.

**The Apex Court has held in Jayanti Vs. Dass Estates Pvt., 2002 AIR SCW 2580 as under:**

*"8. It is settled that amendments to pleadings which are moved at the proper stage and not unduly delayed should not normally be refused. In the application raising dispute on payment of rent under S.17(2) and (2A) of the Act the appellant*

*has right from the beginning denied relationship of landlord and tenant between the parties. An amendment was moved stating that on discovery of additional evidence and material, Alamohan Dass was merely a 'permissive occupier' in respect of one of the Dags. The appellant also sought leave to explain in the nature of her possession and occupation. There does not appear any material inconsistency between the original averments in the application and those proposed by amendment."*

**In Sampath Kumar Vs Ayyakannu, 2002 AIR SCW 3925 it has been held as under:**

*"8. In Mst. Rukhmabai v. Lala Laxminarayan and others, AIR 1960 SC 335, this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so."*

The grievance of the petitioner is that in the light of the decision of the Apex Court, amendment application should have been considered by the Presiding Officer.

The respondents filed their objections on the aforesaid application on 01.02.2006 alleging that the amendment sought by the petitioner will change the nature of the suit and the same has been sought at the last stage of the proceedings, which is causing loss and injury to the respondents.

The matter is sent back to the Additional Civil Judge (J.D) for deciding afresh in the light of the decision of the Apex Court. However, any order passed by the Presiding Officer on 31.03.2006 shall be subject to the final order passed after reconsidering the question of amendment in the light of the decisions of the Apex Court.

Consequently, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

13.04.2006
***Jain***